

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANIEL R. BLACK, MAIRE E.  
BLACK a.k.a. MARIE BLACK;  
HOPE SPRINGS, CORPORATION  
SOLE; B.C. TRUST, MARIE BLACK  
AND WILLIAM SHOENMAKER,  
TRUSTEES; SUMMER HILL  
FREEDOM TRUST, a.k.a. SUMMER  
HILL TRUST, a.k.a. SUMMER HILL  
ORCHARD TRUST, DANIEL  
BLACK AND MAIRE BLACK,  
TRUSTEES; & CHELAN COUNTY  
TREASURER,

Defendants.

NO. CV-07-355-RHW

**ORDER DENYING  
DEFENDANT'S MOTION TO  
DISMISS THE COMPLAINT, OR  
IN THE ALTERNATIVE,  
MOTION FOR SUMMARY  
JUDGMENT**

Before the Court is Defendant's Motion to Dismiss the Complaint or, In the Alternative, Motion for Summary Judgment (Ct. Rec. 18). The motion was heard without oral argument.

On November 2, 2007, Plaintiff filed a complaint to reduce to judgment outstanding federal tax liabilities assessed against Daniel R. Black and Maire E. Black; to foreclose federal tax liens against certain real property; and to have purported transfers of those properties declared fraudulent as against the United States (Ct. Rec. 1).

Rather than file an answer to the complaint, Defendants Daniel Black and Maire E. Black filed a motion to dismiss the complaint. Defendants cite nineteen

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1 reasons why the complaint should be dismissed:

2 1. The Complaint fails to allege what specific process the alleged “direction  
3 of the Attorney General of the United States” takes to authorize this action and  
4 fails to identify the specific authorizing documents that authorizes this civil action  
5 against Defendants.

6 2. The Complaint fails to identify the Chief Counsel of the Internal Revenue  
7 Service by name, and fails to identify authorizing documents supplied by the Chief  
8 Counsel that authorized this civil action against Defendants.

9 3. The Complaint fails to identify the person who allegedly made the  
10 assessments of federal income taxes, penalties and interest against Daniel R. Black.

11 4. The Complaint fails to allege that a Notice of Deficiency was prepared  
12 and served upon Defendant Daniel R. Black by Registered or Certified mail.

13 5. The Complaint fails to identify the supporting documents that were used  
14 to arrive at the alleged assessment against Defendant Daniel R Black.

15 6. The claims against Defendant Daniel R. Black must be dismissed as time-  
16 barred.

17 7. The Complaint fails to identify the person who allegedly made the  
18 assessments of federal income taxes, penalties and interest against Defendant  
19 Maire E. Black.

20 8. The Complaint fails to allege that a Notice of Deficiency was prepared  
21 and served upon Defendant Maire E. Black by Registered or Certified mail.

22 9. The Complaint fails to identify the supporting documents that were used  
23 to arrive at the alleged assessment against Defendant Maire E. Black.

24 10. The claims against Defendant Maire E. Black must be dismissed as  
25 time-barred.

26 11. The Complaint fails to identify the person who allegedly made the  
27 assessments of federal income taxes, penalties and interest against Daniel R. Black  
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1 and Maire E. Black.

2 12. The Complaint fails to allege that a Notice of Deficiency was prepared  
3 and served upon Defendants Daniel R. and Maire E. Black by Registered or  
4 Certified mail.

5 13. The Complaint fails to identify the supporting documents that were used  
6 to arrive at the alleged assessment against Defendants Daniel R. And Maire E.  
7 Black.

8 14. The claims against Defendants Daniel R. and Maire E. Black must be  
9 dismissed as time-barred.

10 15. The Complaint fails to allege any facts to support allegations that Hope  
11 Springs Corporation Sole was not properly formed under RCW § 24.12.010 and  
12 RCW § 24.12.030.

13 16. The Complaint fails to allege any facts to support allegations that Hope  
14 Springs Corporation Sole's receipt of Parcel A was the result of a fraudulent  
15 conveyance.

16 17. The failure of the Complaint to allege facts deprives Defendants of their  
17 substantive and due process rights to prepare a defense.

18 18. The Court is without subject matter jurisdiction because Plaintiffs have  
19 failed to plea adequate facts.

20 19. The Court is without subject matter jurisdiction to permit this action to  
21 proceed.

## 22 **DISCUSSION**

### 23 **A. Standard of Review**

24 Defendants' motion indicates that they are moving to dismiss the complaint,  
25 or in the alternative, seek summary judgment. Defendants have not made any  
26 arguments in support of summary judgment, nor do they cite to Fed. R. Civ. P. 56.  
27 Rather, it is clear that Defendants are seeking to dismiss the action for lack of  
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1 subject matter jurisdiction and failure to state a claim upon which relief can be  
2 granted, pursuant to Fed. R. Civ. P. 12(b)(6). Thus, the Court will proceed  
3 accordingly.

4 The purpose of Rule 12(b)(6) is to test the sufficiency of the statement of a  
5 claim showing that plaintiff is entitled to relief, without forcing defendant to be  
6 subjected to discovery. *Cervantes v. City of San Diego*, 5 F.3d 1273, 1276 (9<sup>th</sup> Cir.  
7 1993). A motion to dismiss does not involve evaluating the substantive merits of  
8 the claim. *Id.* Indeed, “the issue is not whether a plaintiff will ultimately prevail,  
9 but whether the claimant is entitled to offer evidence to support the claims.” *Diaz*  
10 *v. Int’l Longshore and Warehouse Union*, 474 F.3d 1202, 1205 (9<sup>th</sup> Cir. 2007)  
11 (citations omitted).

12 The standard is viewed liberally in favor of plaintiffs. *Cervantes*, 5 F.3d. at  
13 1275. Read in conjunction with Fed. R. Civ. P. 8(a), the complaint should not be  
14 dismissed unless plaintiff fails to state an adequate “short and plain statement of  
15 the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A  
16 complaint need only satisfy the Rule 8(a) notice pleading standards to survive a  
17 Rule 12(b)(6) dismissal. *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097,  
18 1104 (9<sup>th</sup> Cir. 2008) (citations omitted). The complaint need not contain detailed  
19 factual allegations, but it must provide more than “a formulaic recitation of the  
20 elements of a cause of action.” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 127  
21 S.Ct. 1955, 1965 (2007)).

22 In ruling on a Rule 12(b)(6) motion, the court must evaluate whether, in the  
23 light most favorable to the pleader, resolving all discrepancies in the favor of the  
24 pleader, and drawing all reasonable inferences in favor of the pleader, the actual  
25 allegations asserted raise a right to relief above the speculative level. *Id.* In short,  
26 the complaint must provide “plausible” grounds for recovery on its face. *Id.*  
27 Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a  
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1 cognizable legal theory or sufficient facts to support a cognizable legal theory.  
2 *Mendiondo*, 521 F.3d at 1104. Moreover, Rule 12(b)(6) motions are viewed with  
3 disfavor. *Broam v. Bogan*, 320 F.3d 1023, 1028 (9<sup>th</sup> Cir. 2003). “Dismissal  
4 without leave to amend is proper only in ‘extraordinary’ cases.” *Id.*

5 **B. Defendants’ Arguments**

6 The Court finds that Defendants’ arguments are without merit.

7 First, the United States has complied with the applicable procedural  
8 requirements and pleading requirements to permit the Court to have jurisdiction  
9 over this matter. *See Hughes v. United States*, 953 F.2d 531, 536 (9<sup>th</sup> Cir. 1992)  
10 (“The delegation of authority down the chain of command, from the Secretary, to  
11 the Commissioner of Internal Revenue, to local IRS employees constitute a valid  
12 delegation by the Secretary to the Commissioner, and a redelegation by the  
13 Commissioner to the delegated officers and employees.”).

14 Second, the Complaint provides sufficient information regarding the  
15 underlying tax assessments.

16 Third, the Complaint alleges that Defendants failed to file individual tax  
17 returns for the relevant tax years. The statute of limitations cited by Defendants  
18 only applies where a return has been filed.

19 Fourth, contrary to Defendant’s assertions, the United States has sufficiently  
20 plead the existence of property rights based on the federal tax liens at issue. *See*  
21 *United States v. Craft*, 535 U.S. 274, 276 (2002); *Drye v. United States*, 528 U.S.  
22 49, 56 (1999).

23 Finally, the Complaint meets the requirements of Fed. R. Civ. P. 8(a)(2).

24 Accordingly, **IT IS HEREBY ORDERED:**

25 1. Defendant’s Motion to Dismiss the Complaint or, in the Alternative,  
26 Motion for Summary Judgment (Ct. Rec. 18) is **DENIED**.

27 2. Defendant’s Second Motion for Enlargement of Time to Answer  
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1 Complaint (Ct. Rec. 16) is **DENIED**, as moot.

2 3. Within two weeks from the date of this Order, Defendants are directed  
3 to file an Answer to the Complaint.

4 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
5 this Order and forward copies to counsel.

6 **DATED** this 5<sup>th</sup> day of January, 2009.

7 *S/ Robert H. Whaley*

8 **ROBERT H. WHALEY**  
9 Chief United States District Judge

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